1St. African National.
855 Kalamazoo Ave. S.E.
Grand Rapids, Michigan 49507-1379.
616-350-5709.
IMPERIOSIS OMNI IMPETUS.



CAUSA: 42:1983.; 28 U.S. Code § 1367 - Supplemental Jurisdiction

United States Circuit Court of Appeals.

Potter Stewart U.S. Courthouse.

540 Potter Stewart U.S.Courthouse 100 E. Fifth Street Cincinnati, Ohio 45202-3988

28 U.S. Code § 1367 - Supplemental Jurisdiction

USCCOA: *21-2775*.

U.S. District Case No.: 1:21-CV-00078-JTN-PJG..

The Honorable: Janet T Neff. P-18210.

MOTION TO CITE: GIDEON V. WAINWRIGHT;

AND Denton v. Hernandez, 504 U.S. 25 (1992)

MOTION FOR CHANGE OF VENUE.
REQUEST FOR PRE-MOTION CONFERENCE.
IN RE: STACEY R SMITH **USCCOA: *21-2775*.**

28 U.S. Code § 1367 - Supplemental Jurisdiction

INCONJUNCTION TO – IN RE CONTEMPT PROCEEDING.

PLAINTIFF IN RE, **REQUEST FOR A FEDERAL ORDER OF MANDAMUS.**
U.S. CIRCUIT COURT OF APPEALS.
U.S. DISTRICT CASE NO.: 1:21-CV-00078
V. HONORABLE: JANET T. NEFF. P-18210.
FOEDERATI ORDINE DE MANDAMUS

IN RE CONTEMPT PROCEEDING IN THE 30TH JUDICIAL CIRCUIT COURT. MCR 3.306, 3.305, 3.302 MCL 600.1701 AND 600.4401 (1). (INGHAM COUNTY) – MCR 3.606 , 3.305, 3.302.

CHIEF JUSTICE BRIDGET MC CORMACK VENUE CHANGE TO:
MICHIGAN SUPREME COURT 30TH CIRCUIT COURT
(INGHAM) – LANSING MCR 3.305 & 3.302
(FEDERAL RULES OF CIVIL PROCEDURE).
& REQUEST FOR PRE-MOTION CONFERENCE.
28 U.S.C. 1361 & 1631.
MCR 3.606 MCL 600.4401 (1)
LEAD PROSECUTOR CHRISTOPHER R. BECKER

HON. GEORGE S. BUTH STIPULATION OF PROPOSED ORDER IN SUPPORT FOR SUMMARY JUDGMENT.

DEFENSE COUNSEL JOHN R.BEASON **: APPELLANT'S BRIEF.**
DEFAULT JUDGMENT REQUEST.
17TH CIRCUIT CHIEF JUDGE MARK A TRUSOCK RULE 24 – (INTERVENTION).

DEFENDANTS **28 U.S.C. §1651**.
____/BRIEF FOR WRIT OF MANDAMUS: MANDAMUS UT DE FOEDERATUM.
APRIL 10, 2021 ANNO DOMINI. Joint Status Report Requested.

The authority of courts of appeals to issue extraordinary writs is derived from 28 U.S.C. §1651. Subdivisions (a) and (b) regulate in detail the procedure surrounding the writs most commonly sought—mandamus or prohibition directed to a judge or judges.

TITLE V. EXTRAORDINARY WRITS Rule 21. Writs of Mandamus and Prohibition, and Other Extraordinary Writs (a) Mandamus or Prohibition to a Court: Petition, Filing, Service, and Docketing. (1) A party petitioning for a writ of mandamus or prohibition directed to a court must file a petition with the circuit clerk with proof of service on all parties to the proceeding in the trial court. The party must also provide a copy to the trial-court judge. All parties to the proceeding in the trial court other than the petitioner are respondents for all purposes. (2)(A) The petition must be titled ''In re [name of petitioner].'' (B) The petition must state: (i) the relief sought; (ii) the issues presented; (iii) the facts necessary to understand the issue presented by the petition; and (iv) the reasons why the writ should issue. (C) The petition must include a copy of any order or opinion or parts of the record that may be essential to understand the matters set forth in the petition. (3) Upon receiving the prescribed docket fee, the clerk must docket the petition and submit it to the court. (b) Denial; Order Directing Answer; Briefs; Precedence. (1) The court may deny the petition without an answer. Otherwise, it must order the respondent, if any, to answer within a fixed time. 21 FEDERAL RULES OF APPELLATE PROCEDURE Rule 22 (2) The clerk must serve the order to respond on all persons directed to respond. (3) Two or more respondents may answer jointly. (4) The court of appeals may invite or order the trial-court judge to address the petition or may invite an amicus curiae to do so. The trial-court judge may request permission to address the petition but may not do so unless invited or ordered to do so by the court of appeals. (5) If briefing or oral argument is required, the clerk must advise the parties, and when appropriate, the trial-court judge or amicus curiae. (6) The proceeding must be given preference over ordinary civil cases. (7) The circuit clerk must send a copy of the final disposition to the trial-court judge. (c) Other Extraordinary Writs. An application for an extraordinary writ other than one provided for in Rule 21(a) must be made by filing a petition with the circuit clerk with proof of service on the respondents. Proceedings on the application must conform, so far as is practicable, to the procedures prescribed in Rule 21(a) and (b). (d) Form of Papers; Number of Copies; Length Limits. All papers must conform to Rule 32(c)(2). An original and 3 copies must be filed unless the court requires the filing of a different number by local rule or by order in a particular case. Except by the court's permission, and excluding the accompanying documents required by Rule 21(a)(2)(C): (1) a paper produced using a computer must not exceed 7,800 words; and (2) a handwritten or typewritten paper must not exceed 30 pages. (As amended Apr. 29, 1994, eff. Dec. 1, 1994; Apr. 23, 1996, eff. Dec. 1, 1996; Apr. 24,

1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 28, 2016, eff. Dec. 1, 2016.)

FEDERAL RULES OF APPELANT PROCEDURE. RULE 8.

Rule 8. Stay or Injunction Pending Appeal

(a) **Motion for Stay**.

(1) *Initial Motion in the District Court*. A party must ordinarily move first in the district court for the following relief:

(A) a stay of the judgment or order of a district court pending appeal;

(B) approval of a bond or other security provided to obtain a stay of judgment; or

(C) an order suspending, modifying, restoring, or granting an injunction while an appeal is pending.

(2) *Motion in the Court of Appeals; Conditions on Relief*. A motion for the relief mentioned in Rule 8(a)(1) may be made to the court of appeals or to one of its judges.

(A) The motion must:

(i) show that moving first in the district court would be impracticable; or

(ii) state that, a motion having been made, the district court denied the motion or failed to afford the relief requested and state any reasons given by the district court for its action.

(B) The motion must also include:

(i) the reasons for granting the relief requested and the facts relied on;

(ii) originals or copies of affidavits or other sworn statements supporting facts subject to dispute; and

(iii) relevant parts of the record.

(C) The moving party must give reasonable notice of the motion to all parties.

(D) A motion under this Rule 8(a)(2) must be filed with the circuit clerk and normally will be considered by a panel of the court. But in an exceptional case in which time requirements make that procedure impracticable, the motion may be made to and considered by a single judge.

(E) The court may condition relief on a party's filing a bond or other security in the district court.

NOW COMES THE PLAINTIFF, IN RE, with Supplemental Jurisdiction:

Under 28 U.S.C. § 1367, *Supplemental jurisdiction promotes judicial efficiency because all of a party's claims can be decided in one trial by the federal court.* The claim substantially predominates over the claims for which the court has original jurisdiction. (28 USC 1361 & 1631) – PRE-DOMINATION.

(ii) a petition for habeas corpus or other proceeding to challenge a criminal conviction or sentence;

(iii) an action brought without counsel by a person in custody of the United States, a state, or a state subdivision;

and the possibilities for a prompt settlement or resolution of the case, to make or arrange for the disclosures required by Rule 26(a)(1), and to develop a proposed discovery plan that indicates the parties’ views and proposals concerning:

Rule 24.

Intervention (a) INTERVENTION OF RIGHT. On timely motion, the court must permit anyone to intervene who: (1) is given an unconditional right to intervene by a federal

statute; or (2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest. (b) PERMISSIVE INTERVENTION. (1) In General. On timely motion, the court may permit anyone to intervene who: (A) is given a conditional right to intervene by a federal statute; or (B) has a claim or defense that shares with the main action a common question of law or fact. (2) By a Government Officer or Agency. On timely motion, the court may ***permit a (federal) or state governmental officer or agency to intervene: (1ST. AFRICAN NATIONAL & CO. INV. : (GLOBAL); if a party's claim*** or defense is based on: (A) ***a statute or executive order administered by the officer or agency: MCR 7.215 (F) (2) UNDER EXCEPTIONAL ISSUANCE (MISC); MCR 7.203 (A), (B), (C) 1-6***; or (B) any regulation, ***order***, requirement, or (***agreement issued)*** or made under the statute or executive order. (3) Delay or Prejudice. In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights. (c) NOTICE AND PLEADING REQUIRED. A motion to intervene must be served on the parties as provided in Rule 5. The motion must state the grounds for intervention and be accompanied by a pleading that sets out the claim or defense for which intervention is sought. (As amended Dec. 27, 1946, eff. Mar. 19, 1948; Dec. 29, 1948, eff. Oct. 20, 1949; Jan. 21, 1963, eff. July 1, 1963; Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 12, 2006, eff. Dec. 1, 2006; Apr. 30, 2007, eff. Dec. 1, 2007.)

(2) Conference Content; Parties' Responsibilities. In conferring, the parties must consider the nature and basis of their claims and defenses and the possibilities for promptly settling or re solving the case; make or arrange for the disclosures required by Rule ***26(a)(1); discuss any issues about preserving discoverable information; and develop a proposed discovery plan.*** The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging the conference, for ***attempting in good faith to agree on the proposed discovery plan, and for submitting to the court within 14 days after the conference a written report outlining the plan***. The court may order the parties or attorneys to attend the conference in person.

Rule 30

FEDERAL RULES OF CIVIL PROCEDURE

(6) Notice or Subpoena Directed to an Organization. In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a governmental agency, or other entity and must describe with reasonable particularity the matters for examination. The named organization must then designate one or more officers, directors, or managing agents, or designate other persons who con sent to testify on its behalf; and it may set out the matters on which each person designated will testify. A subpoena must advise a nonparty organization of its duty to make this designation. The persons designated must testify about information known or reasonably available to the organization. This paragraph (6) does not preclude a deposition by any other procedure allowed by these rules.

(2) Sanction. The court may impose an appropriate sanction—including the reasonable expenses and attorney's fees incurred by any party—on a person who impedes, delays, or frustrates the fair examination of the deponent.

Rule 30
FEDERAL RULES OF CIVIL PROCEDURE

(6) Notice or Subpoena Directed to an Organization. In its notice or subpoena, a party may name as the deponent a public or Private Corporation, a partnership, an association, a governmental agency, or other entity and must describe with reasonable particularity the matters for examination. The named organization must then designate one or more officers, directors, or managing agents, or designate other persons who con sent to testify on its behalf; and it may set out the matters on which each person designated will testify. A subpoena must advise a nonparty organization of its duty to make this designation. The persons designated must testify about information known or reasonably available to the organization. This paragraph (6) does not preclude a deposition by any other procedure allowed by these rule

Rule 38. Right to a Jury Trial; Demand (a) RIGHT PRESERVED. The right of trial by jury as declared by the Seventh Amendment to the Constitution—or as provided by a federal statute—is preserved to the parties inviolate. (b) DEMAND. On any issue tri-able of right by a jury, a party may demand a jury trial by: (1) serving the other parties with a written demand—which may be included in a pleading—no later than 14 days after the

last pleading directed to the issue is served; and (2) filing the demand in accordance with Rule 5(d).

Rule 39.

Trial by Jury or by the Court (a) **WHEN A DEMAND IS MADE.** When a jury trial has been demanded under Rule 38, the action must be designated on the dock et as a jury action. The trial on all issues so demanded must be by jury unless: (1) the parties or their attorneys file a stipulation to a nonjury trial or so stipulate on the record; or (2) the court, on motion or on its own, finds that on some or all of those issues there is no federal right to a jury trial. (b) WHEN NO DEMAND IS MADE. Issues on which a jury trial is not properly demanded are to be tried by the court. But the court may, on motion, order a jury trial on any issue for which a jury might have been demanded. (c) ADVISORY JURY; JURY TRIAL BY CONSENT. In an action not tri able of right by a jury, the court, on motion or on its own: (1) may try any issue with an advisory jury; or (2) may, with the parties' consent, try any issue by a jury whose verdict has the same effect as if a jury trial had been a matter of right, unless the action is against the United States and a federal statute provides for a nonjury trial. (As amended Apr. 30, 2007, eff. Dec. 1, 2007.)

Rule 44.

Proving an Official Record (a) MEANS OF PROVING. (1) Domestic Record. Each of the following evidences an official record—or an entry in it—that is otherwise admissible and is kept within the United States, any state, district, or commonwealth, or any territory subject to the administrative or judicial jurisdiction of the United States: (A) an official publication of the record; or (B) a copy attested by the officer with legal custody of the record—or by the officer's deputy—and accompanied by a certificate that the officer has custody. The certificate must be made under seal: (i) by a judge of a court of record in the district or political subdivision where the record is kept; or (ii) by any public officer with a seal of office and with official duties in the district or political subdivision where the record is kept. (2) Foreign Record. (A) In General. Each of the following evidences a foreign official record—or an entry in it—that is otherwise admissible: (i) an official publication of the record; or (ii) the record—or a copy—that is attested by an authorized person and is accompanied either by a final certification of genuineness or by a certification under a treaty or convention to which the United States and the country where the record is located are parties. (B) Final Certification of Genuineness. A final certification must certify the genuineness of the signature and official position of the attester or of any foreign official whose certificate of genuineness relates to the attestation or is in a chain of certificates of genuineness relating to the attestation. A final certification may be made by a secretary of a United States embassy or legation; by a

consul general, vice consul, or consular agent of the United States; or by a diplomatic or consular official of the foreign country assigned or accredited to the United States. (C) Other Means of Proof. If all parties have had a reason able opportunity to investigate a foreign record's authenticity and accuracy, the court may, for good cause, either: (i) admit an attested copy without final certification; or (ii) permit the record to be evidenced by an attested summary with or without a final certification. (b) LACK OF A RECORD. A written statement that a diligent search of designated records revealed no record or entry of a specified tenor is admissible as evidence that the records contain no such record or entry. For domestic records, the statement must be authenticated under Rule 44(a)(1). For foreign records, the statement must comply with (a)(2)(C)(ii). (c) OTHER PROOF. A party may prove an official record—or an entry or lack of an entry in it—by any other method authorized by law. (As amended Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 30, 2007, eff. Dec. 1, 2007.)

Rule 45.

Subpoena (a) IN GENERAL. (1) Form and Contents. (A) Requirements—In General. Every subpoena must: (i) state the court from which it issued; (ii) state the title of the action and its civil-action number; (iii) command each person to whom it is directed to do the following at a specified time and place: attend and testify; produce designated documents, electronically stored information, or tangible things in that person's possession, custody, or control; or permit the inspection of premises; and (iv) set out the text of Rule 45(d) and (e). (B) Command to Attend a Deposition—Notice of the Recording Method. A subpoena commanding attendance at a deposition must state the method for recording the testimony. Rule 45 FEDERAL RULES OF CIVIL PROCEDURE 68 (C) Combining or Separating a Command to Produce or to Permit Inspection; Specifying the Form for Electronically Stored Information. A command to produce documents, electronically stored information, or tangible things or to permit the inspection of premises may be included in a subpoena commanding attendance at a deposition, hearing, or trial, or may be set out in a separate subpoena. A subpoena may specify the form or forms in which electronically stored information is to be produced. (D) Command to Produce; Included Obligations. A command in a subpoena to produce documents, electronically stored information, or tangible things requires the responding person to permit inspection, copying, testing, or sampling of the materials. (2) Issuing Court. A subpoena must issue from the court where the action is pending. (3) Issued by Whom. The clerk must issue a subpoena, signed but otherwise in blank, to a party who

requests it. That party must complete it before service. An attorney also may issue and sign a subpoena if the attorney is authorized to practice in the issuing court. (4) Notice to Other Parties Before Service. If the subpoena commands the production of documents, electronically stored in formation, or tangible things or the inspection of premises before trial, then before it is served on the person to whom it is directed, a notice and a copy of the subpoena must be served on each party. (b) SERVICE. (1) By Whom and How; Tendering Fees. Any person who is at least 18 years old and not a party may serve a subpoena. Serving a subpoena requires delivering a copy to the named person and, if the subpoena requires that person's attendance, tendering the fees for 1 day's attendance and the mileage allowed by law. Fees and mileage need not be tendered when the subpoena issues on behalf of the United States or any of its officers or agencies. (2) Service in the United States. A subpoena may be served at any place within the United States. (3) Service in a Foreign Country. 28 U.S.C. § 1783 governs issuing and serving a subpoena directed to a United States national or resident who is in a foreign country. (4) Proof of Service. Proving service, when necessary, requires filing with the issuing court a statement showing the date and manner of service and the names of the persons served. The statement must be certified by the server. (c) PLACE OF COMPLIANCE. (1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows: (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person (i) is a party or a party's officer; or 69 FEDERAL RULES OF CIVIL PROCEDURE Rule 45 (ii) is commanded to attend a trial and would not incur substantial expense. (2) For Other Discovery. A subpoena may command: (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and (B) inspection of premises at the premises to be inspected. (d) PROTECTING A PERSON SUBJECT TO A SUBPOENA; ENFORCE MENT. (1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply. (2) Command to Produce Materials or Permit Inspection. (A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial. (B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the

premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply: (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection. (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance. (3) Quashing or Modifying a Subpoena. (A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that: (i) fails to allow a reasonable time to comply; (ii) requires a person to comply beyond the geo graphical limits specified in Rule 45(c); (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or (iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires: (i) disclosing a trade secret or other confidential research, development, or commercial information; or (ii) disclosing an un-retained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party. (C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party: (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and (ii) ensures that the subpoenaed person will be reasonably compensated. (e) DUTIES IN RESPONDING TO A SUBPOENA. (1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information: (A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand. (B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or

forms in which it is ordinarily maintained or in a reasonably usable form or forms. (C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form. (D) Inaccessible Electronically Stored Information. The per son responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery. (2) Claiming Privilege or Protection. (A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must: (i) expressly make the claim; and (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that,

without revealing information itself privileged or protected, will enable the parties to assess the claim. (B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is re solved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved. (f) TRANSFERRING A SUBPOENA-RELATED MOTION. When the court where compliance is required did not issue the subpoena, it may transfer a motion under this rule to the issuing court if the person subject to the subpoena consents or if the court finds exceptional circumstances. Then, if the attorney for a person subject to a subpoena is authorized to practice in the court where the motion was made, the attorney may file papers and appear on the motion as an officer of the issuing court. To enforce its order, the issuing court may transfer the order to the court where the motion was made. (g) CONTEMPT. The court for the district where

compliance is required—and also, after a motion is transferred, the issuing court— may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it. (As amended Dec. 27, 1946, eff. Mar. 19, 1948; Dec. 29, 1948, eff. Oct. 20, 1949; Mar. 30, 1970, eff. July 1, 1970; Apr. 29, 1980, eff. Aug. 1, 1980; Apr. 29, 1985, eff. Aug. 1, 1985; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 25, 2005, eff. Dec. 1, 2005; Apr. 12, 2006, eff. Dec. 1, 2006; Apr. 30, 2007, eff. Dec. 1, 2007; Apr. 16, 2013, eff. Dec. 1, 2013.) Rule 46. Objecting to a Ruling or Order A formal exception to a ruling or order is unnecessary. When the ruling or order is requested or made, a party need only state the action that it wants the court to take or objects to, along with the grounds for the request or objection. Failing to object does not prejudice a party who had no opportunity to do so when the ruling or order was made. (As amended Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007.)

Rule 46. Objecting to a Ruling or Order A formal exception to a ruling or order is unnecessary. When the ruling or order is requested or made, a party need only state the action that it wants the court to take or objects to, along with the grounds for the request or objection. Failing to object does not prejudice a party who had no opportunity to do so when the ruling or order was made. (As amended Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007.)

Rule 56. Summary Judgment (a) MOTION FOR SUMMARY JUDGMENT OR PARTIAL SUMMARY JUDGMENT. A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion. (b) TIME TO FILE A MOTION. Unless a different time is set by local rule or the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery. (c) PROCEDURES. (1) Supporting Factual Positions. A party asserting that a fact cannot be or is genuinely disputed must support the assertion by: (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored in formation, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an ad verse party cannot produce admissible evidence to support the fact. 81 FEDERAL RULES OF CIVIL PROCEDURE Rule 56 (2) Objection That a Fact Is Not Supported by Admissible Evidence. A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence. (3) Materials Not Cited. The

court need consider only the cited materials, but it may consider other materials in the record. (4) Affidavits or Declarations. An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated. (d) WHEN FACTS ARE UNAVAILABLE TO THE NONMOVANT. If a non movant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may: (1) defer considering the motion or deny it; (2) allow time to obtain affidavits or declarations or to take discovery; or (3) issue any other appropriate order. (e) FAILING TO PROPERLY SUPPORT OR ADDRESS A FACT. If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may: (1) give an opportunity to properly support or address the fact; (2) consider the fact undisputed for purposes of the motion; (3) grant summary judgment if the motion and supporting materials—including the facts considered undisputed—show that the movant is entitled to it; or (4) issue any other appropriate order. (f) JUDGMENT INDEPENDENT OF THE MOTION. After giving notice and a reasonable time to respond, the court may: (1) grant summary judgment for a nonmovant; (2) grant the motion on grounds not raised by a party; or (3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute. (g) FAILING TO GRANT ALL THE REQUESTED RELIEF. If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact—including an item of damages or other relief—that is not genuinely in dispute and treating the fact as established in the case. (h) AFFIDAVIT OR DECLARATION SUBMITTED IN BAD FAITH. If satisfied that an affidavit or declaration under this rule is submitted in bad faith or solely for delay, the court—after notice and a reasonable time to respond—may order the submitting party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result. An offending party or attorney may also be held in contempt or subjected to other appropriate sanctions. (As amended Dec. 27, 1946, eff. Mar. 19, 1948; Jan. 21, 1963, eff. July 1, 1963; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009; Apr. 28, 2010, eff. Dec. 1, 2010.)

Rule 71 FEDERAL RULES OF CIVIL PROCEDURE 90 (b) VESTING TITLE. If the real or personal property is within the district, the court—instead of ordering a conveyance—may enter a judgment divesting any party's title and vesting it in others. That judgment has the effect of a legally executed conveyance. (c) OBTAINING A WRIT OF ATTACHMENT OR SEQUESTRATION. On application by a party entitled to performance of an act, the clerk must issue a writ of attachment or sequestration against the dis obedient party's property to compel obedience. (d) OBTAINING A WRIT OF EXECUTION OR ASSISTANCE. On application by a party who obtains a

judgment or order for possession, the clerk must issue a writ of execution or assistance.

(e) HOLDING IN CONTEMPT. The court may also hold the disobedient party in contempt. (As amended Apr. 30, 2007, eff. Dec. 1, 2007.) Rule 71. Enforcing Relief For or Against a Nonparty When an order grants relief for a nonparty or may be enforced against a nonparty, the procedure for enforcing the order is the same as for a party. (As amended Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007.)

Denton v. Hernandez, 504 U.S. 25 (1992)

OCTOBER TERM, 1991

Syllabus

DENTON, DIRECTOR OF CORRECTIONS OF CALIFORNIA, ET AL. *v.* HERNANDEZ

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 90-1846. Argued February 24, 1992-Decided May 4,1992

Respondent Hernandez, a prisoner proceeding *pro se,* filed five civil rights suits *in forma pauperis* against petitioner California prison officials, alleging, *inter alia,* that he was drugged and homosexually raped 28 times by various inmates and prison officials at different institutions. Finding that the facts alleged appeared to be wholly fanciful, the District Court dismissed the cases under 28 U. S. C. § 1915(d), which allows courts to dismiss an *in forma pauperis* complaint "if satisfied that the action is frivolous." Reviewing the dismissals *de novo,* the Court of Appeals reversed and remanded three of the cases. ***The court's lead opinion concluded that a court can dismiss a complaint as factually frivolous only if the allegations conflict with judicially noticeable facts and that it was impossible to take judicial notice*** that none of the alleged rapes occurred; the concurring opinion concluded that Circuit precedent required that Hernandez be given notice that his claims were to be dismissed as frivolous and a chance to amend his complaints. The Court of Appeals adhered to these positions on remand from this Court for consideration of the Court's intervening decision in *Neitzke* v. *Williams,* 490 U. S. 319, which held that an *in forma pauperis* complaint "is frivolous [under § 1915(d)] where it lacks an arguable basis either in law or in fact," *id.,* at 325.

Held:

1. The Court of Appeals incorrectly limited the power granted the courts to dismiss a frivolous case under § 1915(d). Section 1915(d) gives the courts "the unusual power to pierce the veil of the complaint's factual allegations and dismiss those claims whose factual contentions are clearly baseless." *Id.,* at 327. Thus, the court is not bound, as it

usually is when making a determination based solely on the pleadings, to accept without question the truth of the plaintiff's allegations. However, in order to respect the congressional goal of assuring equality of consideration for all litigants, the initial assessment of the *in forma pauperis* plaintiff's factual allegations must be weighted in the plaintiff's favor. A factual frivolousness finding is appropriate when the facts alleged rise to the level of the irrational or the wholly incredible,

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Syllabus

whether or not there are judicially noticeable facts available to contradict them, but a complaint cannot be dismissed simply because the court finds the allegations to be improbable or unlikely. The "clearly baseless" guidepost need not be defined with more precision, since the district courts are in the best position to determine which cases fall into this category, and since the statute's instruction allowing dismissal if a court is "satisfied" that the complaint is frivolous indicates that the frivolousness decision is entrusted to the discretion of the court entertaining the complaint. Pp.31-33.

2. Because the frivolousness determination is a discretionary one, a § 1915(d) dismissal is properly reviewed for an abuse of that discretion. It would be appropriate for a court of appeals to consider, among other things, whether the plaintiff was proceeding *pro se,* whether the district court inappropriately resolved genuine issues of disputed fact, whether the court applied erroneous legal conclusions, whether the court has provided a statement explaining the dismissal that facilitates intelligent appellate review, and whether the dismissal was with or without prejudice. With respect to the last factor, the reviewing court should determine whether the district court abused its discretion by dismissing the complaint with prejudice or without leave to amend if it appears that the allegations could be remedied through more specific pleading, since dismissal under § 1915(d) could have a res judicata effect on frivolousness determinations for future *in forma pauperis* petitions. This Court expresses no opinion on the Court of Appeals' rule that a *pro se* litigant bringing suit *in forma pauperis* is entitled to notice and an opportunity to amend the complaint to overcome any deficiency unless it is clear that no amendment can cure the defect. Pp. 33-35.

929 F.2d 1374, vacated and remanded.

O'CONNOR, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and WHITE, SCALIA, KENNEDY, SOUTER, and THOMAS, JJ., joined. STEVENS, J., filed a dissenting opinion, in which BLACKMUN, J., joined, *post,* p. 35.

James Ching, Supervising Deputy Attorney General of California, argued the cause for petitioners. With him on the briefs were *Daniel E. Lungren,* Attorney General, *George*

Williamson, Chief Assistant Attorney General, *Kenneth* C. *Young,* Assistant Attorney General, and *Joan W Cavanagh,* Supervising Deputy Attorney General.

§1367. Supplemental jurisdiction

(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of ***which the district courts have original jurisdiction***, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

(b) In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.

(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if-

(1) the claim raises a novel or complex issue of State law,

(2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,

(3) the district court has dismissed all claims over which it has original jurisdiction, or

(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

(d) The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

(e) As used in this section, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(Added Pub. L. 101–650, title III, §310(a), Dec. 1, 1990, 104 Stat. 5113 .)

MOTION FOR CHANGE OF VENUE.
REQUEST FOR PRE-MOTION CONFERENCE.

IN RE: STACEY R SMITH

28 U.S. Code § 1367 - Supplemental Jurisdiction

INCONJUNCTION TO – IN RE CONTEMPT PROCEEDING.

PLAINTIFF IN RE,

U.S. DISTRICT CASE NO.: 1:21-CV-00078

V. HONORABLE: JANET T. NEFF. P-18210.

IN RE CONTEMPT PROCEEDING IN THE 30TH JUDICIAL CIRCUIT COURT COURT. MCR 3.306, 3.305, 3.302 MCL 600.1701 AND 600.4401 (1). (INGHAM COUNTY) – MCR 3.606 , 3.305, 3.302.

CHIEF JUSTICE BRIDGET MC CORMACK
MICHIGAN SUPREME COURT

VENUE CHANGE TO:
30TH CIRCUIT COURT
(INGHAM) – LANSING MCR 3.305 & 3.302
(FEDERAL RULES OF CIVIL PROCEDURE).

&

REQUEST FOR PRE-MOTION CONFERENCE.
28 U.S.C. 1361 & 1631.
MCR 3.606 MCL 600.4401 (1)

LEAD PROSECUTOR CHRISTOPHER R. BECKER

HON. GEORGE S. BUTH

STIPULATION OF PROPOSED ORDER IN SUPPORT FOR SUMMARY JUDGMENT.

DEFENSE COUNSEL JOHN R. BEASON

: MOTION IN USDC

DEFAULT JUDGMENT REQUEST.

17TH CIRCUIT CHIEF JUDGE MARK A TRUSOCK

DEFENDANTS

____/

APRIL 10, 2021 ANNO DOMINI. Joint Status Report Requested.

NOW COME THE PLAINTIFF, IN RE, with Supplemental Jurisdiction:

Under 28 U.S.C. § 1367, a ***federal district court may exercise supplemental jurisdiction over state-law claims*** that the court would not otherwise have **subject matter jurisdiction** to hear, ***as long as the claims are part of the same case or controversy as the claims over which the court has original jurisdiction*** (28 U.S.C. § 1367(a)). *Supplemental jurisdiction promotes judicial efficiency because all of a party's claims can be decided in one trial by the federal court,* ***rather than in two trials by a federal and a state court.*** *The supplemental jurisdiction statute codifies the* ***common law doctrines of "ancillary" and "pendent" jurisdiction.***

Generally, a federal court may exercise supplemental jurisdiction over claims brought by or against additional parties such as third-party defendants, parties who are required or permitted to be joined in the case and (***intervenors) THE FEDERAL COURTS THAT IS THIS FEDERAL COURT TOO BY THE WAY -*** (28 U.S.C. § 1367(a)). In cases where the federal court's jurisdiction is based solely on **diversity jurisdiction** THIS CASE IS NOT A DIVERSITY ISSUE THERFORE THIS APPLIES TO USDC: 1:21-CV-78, however, the court does not have supplemental jurisdiction to hear claims by or against additional parties if their presence in the case would destroy complete diversity (28 U.S.C. § 1367(b)).

A district court in its discretion may decline to exercise supplemental jurisdiction over a state law claim if:

- The claim raises a novel or complex issue of state law.
- The claim substantially predominates over the claims for which the court has original jurisdiction. (28 USC 1361 & 1631) – PRE-DOMINATION.
- The district court has dismissed all claims over which it has original jurisdiction.
- In exceptional circumstances, there are other compelling reasons for declining jurisdiction.

(28 U.S.C. §1367(c).)

For more information on supplemental jurisdiction, see Practice Note, Commencing a Federal Lawsuit: Initial Considerations: Subject Matter Jurisdiction.

This CLUE to which the Honorable Phillip Green is referring to is the Motion attempt on several occasions to Transfer want of Subject-Matter Jurisdiction per The Honorable Paul Lewis Maloney P-25194, as RENDERING IN HIS JUDGMENT that I stated a claim to which his court has Subject-Matter Jurisdiction – or Superintending Control pursuant to 28 U.S.C. 1361 & 1631 to MCL 600.4401 (1) – MCR 3.606 – IN RE CONTEMPT OF A STATE OFFICIAL – MCR 3.305 – MANDAMUS AGAINST A STATE OFFICIAL – MCR 3.302 SUPERINTENDING CONTROL – ALL HAVING BEEN IGNORED ALL THE WAY UP TO THE CHIEF JUSTICE OF THE MICHIGAN SUPREME COURT – BRIDGET M. MC CORMACK – Breach of the 17TH Judicial Circuit Court Sentencing Plea Agreement – Evidence being the 17TH Judicial Court Transcript. All being completely ignored.

28 U.S. Code § 1367 - Supplemental jurisdiction

- U.S. Code
- Notes

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(a)
Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.
(b)
In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.
(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if—

(1)

the claim raises a novel or complex issue of State law,

(2)

the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,

(3)

the district court has dismissed all claims over which it has original jurisdiction, or

(4)

in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

(d)

The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

(e)

As used in this section, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(Added Pub. L. 101–650, title III, § 310(a), Dec. 1, 1990, 104 Stat. 5113.)

RULE 26 OF THE FEDERAL RULES OF CIVIL PROCEDURE: GENERAL PROVISIONS REGARDING DUSCOVERY; DUTY OF DISCLOSURE

(a) Required Disclosures; Methods to Discover Additional Matter.

(1) Initial Disclosures.

Except in categories of proceedings specified in Rule 26(a)(1)(E), or to the extent otherwise stipulated or directed by order, a party must, without awaiting a discovery request, provide to other parties:

(A) the name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless solely for impeachment, identifying the subjects of the information;

(B) a copy of, or a description by category and location of, all documents, data compilations, and tangible things that

are in the possession, custody, or control of the party and that the disclosing party may use to support its claims or defenses, unless solely for impeachment;

(C) a computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and

(D) for inspection and copying as under Rule 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

(E) The following categories of proceedings are exempt from initial disclosure under Rule 26(a)(1) :

(i) an action for review on an administrative record;

(ii) a petition for habeas corpus or other proceeding to challenge a criminal conviction or sentence;

(iii) an action brought without counsel by a person in custody of the United States, a state, or a state subdivision;

(iv) an action to enforce or quash an administrative summons or subpoena;

(v) an action by the United States to recover benefit payments;

(vi) an action by the United States to collect on a student loan guaranteed by the United States;

(vii) a proceeding ancillary to proceedings in other courts; and

(viii) an action to enforce an arbitration award.

These disclosures must be made at or within 14 days after the Rule 26(f) conference unless a different time is set by stipulation or court order, or unless a party objects during the conference that initial disclosures are not appropriate in the circumstances of the action and states the objection in the Rule 26(f) discovery plan. In ruling on the objection, the court must determine what disclosures - if any - are to be made, and set the time for disclosure. Any party first served or otherwise joined after the Rule 26(f) conference must make these disclosures within 30 days after being served or joined unless a different time is set by stipulation or court order. A party must make its initial disclosures based on the information then reasonably available to it and is not excused from making its disclosures because it has not fully completed its investigation of the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

(2) Disclosure of Expert Testimony.

(A) In addition to the disclosures required by paragraph (1), a party shall disclose to other parties the identity of any person who may be used at trial to present evidence under Rules 702, 703, or 705 of the Federal Rules of Evidence.

(B) Except as otherwise stipulated or directed by the court, this disclosure shall, with respect to a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony, be accompanied by a written report prepared and signed by the witness. The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

(C) These disclosures shall be made at the times and in the sequence directed by the court. In the absence of other directions from the court or stipulation by the parties, the disclosures shall be made at least 90 days before the trial date or the date the case is to be ready for trial or, if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under paragraph (2)(B), within 30 days after the disclosure made by the other party. The parties shall supplement these disclosures when required under subdivision (e)(1).

(3) Pretrial Disclosures.

In addition to the disclosures required by Rule 26(a)(1) and (2) , a party must provide to other parties and promptly file with the court the following information regarding the evidence that it may present at trial other than solely for impeachment:

(A) the name and, if not previously provided, the address and telephone number of each witness, separately identifying those whom the party expects to present and those whom the party may call if the need arises;

(B) the designation of those witnesses whose testimony is expected to be presented by means of a deposition and, if not taken stenographically, a transcript of the pertinent portions of the deposition testimony; and

(C) an appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises.

Unless otherwise directed by the court, these disclosures must be made at least 30 days before trial. Within 14 days thereafter, unless a different time is specified by the court, a party may serve and promptly file a list disclosing (i) any objections to the use under Rule 32(a) of a deposition designated by another party under Rule 26(a)(3)(B), and (ii) any objection, together with the grounds therefor, that may be made to the admissibility of materials identified under Rule 26(a)(3)(C). Objections not so disclosed, other than objections under Rules 402 and 403 of the Federal Rules of Evidence, are waived unless excused by the court for good cause.

(4) Form of Disclosures.

Unless the court orders otherwise, all disclosures under Rules 26(a)(1) through (3) must be made in writing, signed, and served.

(5) Methods to Discover Additional Matter.

Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property under Rule 34 or 45(a)(1) (C), for inspection and other purposes; physical and mental examinations; and requests for admission.

(b) Discovery Scope and Limits.

Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In General.

Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. All discovery is subject to the limitations imposed by Rule 26(b)(2)(i), (ii), and (iii).

(2) Limitations.

By order, the court may alter the limits in these rules on the number of depositions and interrogatories or the length of depositions under Rule 30 . By order or local rule, the court may also limit the number of requests under Rule 36 . The frequency or extent of use of the discovery methods otherwise permitted under these rules and by any local rule shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues. The court may act upon its

own initiative after reasonable notice or pursuant to a motion under Rule 26(c) .

(3) Trial Preparation: Materials.

Subject to the provisions of subdivision (b)(4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) Trial Preparation: Experts.

(A) A party may depose any person who has been identified as an expert whose opinions may be presented at trial. If a report from the expert is required under subdivision (a)(2)(B), the deposition shall not be conducted until after the report is provided.

(B) A party may, through interrogatories or by deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Rule 35(b) or upon a showing

of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under this subdivision; and (ii) with respect to discovery obtained under subdivision (b)(4)(B) of this rule the court shall require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(5) Claims of Privilege or Protection of Trial Preparation Materials.

When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

(c) Protective Orders.

Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the district where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) that the disclosure or discovery not be had;

(2) that the disclosure or discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) that certain matters not be inquired into, or that the scope of the disclosure or discovery be limited to certain matters;

(5) that discovery be conducted with no one present except persons designated by the court;

(6) that a deposition, after being sealed, be opened only by order of the court;

(7) that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a designated way; and

(8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or other person provide or permit discovery. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(d) Timing and Sequence of Discovery.

Except in categories of proceedings exempted from initial disclosure under Rule 26(a)(1)(E), or when authorized under these rules or by order or agreement of the parties, a party may not seek discovery from any source before the parties have conferred as required by Rule 26(f) . Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence, and the fact that a party is conducting discovery, whether by deposition or otherwise, does not operate to delay any other party's discovery.

(e) Supplementation of Disclosures and Responses.

A party who has made a disclosure under subdivision (a) or responded to a request for discovery with a disclosure or response is under a duty to supplement or correct the disclosure or response to include information thereafter acquired if ordered by the ourt or in the following circumstances:

(1) A party is under a duty to supplement at appropriate intervals its disclosures under subdivision (a) if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing. With respect to testimony of an expert from whom a report is required under subdivision (a)(2)(B) the duty extends both to information contained in the report and to information provided through a deposition of the expert, and any

additions or other changes to this information shall be disclosed by the time the party's disclosures under Rule 26(a)(3) are due.

(2) A party is under a duty seasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(f) Meeting of Parties; Planning for Discovery.

Except in categories of proceedings exempted from initial disclosure under Rule 26(a)(1)(E) or when otherwise ordered, the parties must, as soon as practicable and in any event at least 21 days before a scheduling conference is held or a scheduling order is due under Rule 16(b), confer to consider the nature and basis of their claims and defenses ***and the possibilities for a prompt settlement or resolution of the case, to make or arrange for the disclosures required by Rule 26(a)(1), and to develop a proposed discovery plan that indicates the parties’ views and proposals concerning:***

(1) what changes should be made in the timing, form, or requirement for disclosures under Rule 26(a), including a statement as to when disclosures under Rule 26(a)(1) were made or will be made;

(2) the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused upon particular issues;

(3) what changes should be made in the limitations on discovery imposed under these rules or by local rule, and what other limitations should be imposed; and

(4) any other orders that should be entered by the court under Rule 26(c) or under Rule 16(b) and (c).

The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging the conference, for attempting in good faith to agree on the proposed discovery plan, and for submitting to the court

within 14 days after the conference a written report outlining the plan. A court may order that the parties or attorneys attend the conference in person. If necessary to comply with its expedited schedule for Rule 16(b) conferences, a court may by local rule (i) require that the conference between the parties occur fewer than 21 days before the scheduling conference is held or a scheduling order is due under Rule 16(b), and (ii) require that the written report outlining the discovery plan be filed fewer than 14 days after the conference between the parties, or excuse the parties from submitting a written report and permit them to report orally on their discovery plan at the Rule 16(b) conference.

(g) Signing of Disclosures, Discovery Requests, Responses, and Objections.

(1) Every disclosure made pursuant to subdivision (a)(1) or subdivision (a)(3) shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. An unrepresented party shall sign the disclosure and state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the disclosure is complete and correct as of the time it is made.

(2) Every discovery request, response, or objection made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. An unrepresented party shall sign the request, response, or objection and state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the request, response, or objection is:

(A) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;

(B) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

(C) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation.

If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the

party making the request, response, or objection, and a party shall not be obligated to take any action with respect to it until it is signed.

(3) If without substantial justification a certification is made in violation of the rule, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the disclosure, request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee.

HISTORY: (Amended Mar. 19, 1948; July 1, 1963; July 1, 1966; July 1, 1970; Aug. 1, 1980; Aug. 1, 1983; Aug. 1, 1987; Dec. 1, 1993)

MOTION TO CITE: GIDEON V. WAINWRIGHT;

The Sixth Amendment's guarantee of a right to assistance of counsel applies to criminal defendants in state court by way of the Fourteenth Amendment.

Conclusion.

In a unanimous opinion authored by Justice Hugo L. Black, the Court held that it was consistent with the Constitution to require state courts to appoint attorneys for defendants who could not afford to retain counsel on their own. The Court reasoned that the Sixth Amendment's guarantee of counsel is a fundamental and essential right made obligatory upon the states by the Fourteenth Amendment. The Sixth Amendment guarantees the accused the right to the assistance of counsel in all criminal prosecutions and requires courts to provide counsel for defendants unable to hire counsel unless the right was competently and intelligently waived.

Justice Douglas, while joining the Court's opinion, elaborated, in a separate opinion, the relation between the Bill of Rights and the first section of the Fourteenth Amendment.

Justices Clark and Harlan concurred in separate decisions.

Facts of the case

Clarence Earl Gideon was charged in Florida state court with felony breaking and entering. When he appeared in court without a lawyer, Gideon requested that the court

appoint one for him. According to Florida state law, however, an attorney may only be appointed to an indigent defendant in capital cases, so the trial court did not appoint one. Gideon represented himself in trial. He was found guilty and sentenced to five years in prison. Gideon filed a habeas corpus petition in the Florida Supreme Court, arguing that the trial court's decision violated his constitutional right to be represented by counsel. The Florida Supreme Court denied habeas corpus relief.

Question

Does the Sixth Amendment's right to counsel in criminal cases extend to felony defendants in state courts?

SUPREME COURT RULE 12: The Appellant would like to exercise this rule but does not know how to file a Writ of Certiorari;

Rule 11. Certiorari to a United States Court of Appeals Before Judgment A petition for a writ of certiorari to review a case pending in a United States court of appeals, before judgment is entered in that court, will be granted only upon a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court. See 28 U. S. C. § 2101(e).

WRIT OF MANDAMUS – MANDAMUS UT DE FODERATUM;
SOURCE:

United States Court of Appeals for the Fourth Circuit

Federal and Local Rules of Appellate Procedure

January 25, 2021

FOEDERATI ORDINE DE MANDAMUS. 28 USC 1331- A FEDERAL QUESTION USCCA: 17-1022; 20-1716; 21-2775.

Rule 21. Writs of Mandamus and Prohibition, and Other Extraordinary Writs

(a) Mandamus or Prohibition to a Court: Petition, Filing, Service, and Docketing.

(1) A party petitioning for a writ of mandamus or prohibition directed to a court must file the petition with the circuit clerk and serve it on all parties to the proceeding in the trial court. The party must also provide a copy to the trial-court judge. All parties to the proceeding in the trial court other than the petitioner are respondents for all purposes.

(2) (A) The petition must be titled "In re [name of petitioner]."

(B) The petition must state:

(i) the relief sought;

(ii) the issues presented;

(iii) the facts necessary to understand the issue presented by the petition; and

(iv) the reasons why the writ should issue.

(C) The petition must include a copy of any order or opinion or parts of the record that may be essential to understand the matters set forth in the petition.

(3) Upon receiving the prescribed docket fee, the clerk must docket the petition and submit it to the court.

(b) Denial; Order Directing Answer; Briefs; Precedence.

(1) The court may deny the petition without an answer. Otherwise, it must order the respondent, if any, to answer within a fixed time.

(2) The clerk must serve the order to respond on all persons directed to respond.

(3) Two or more respondents may answer jointly.

(4) The court of appeals may invite or order the trial-court judge to address the petition or may invite an amicus curiae to do so. The trial-court judge may request permission to address the petition but may not do so unless invited or ordered to do so by the court of appeals.

(5) If briefing or oral argument is required, the clerk must advise the parties, and when appropriate, the trial-court judge or amicus curiae.

(6) The proceeding must be given preference over ordinary civil cases.

(7) The circuit clerk must send a copy of the final disposition to the trial-court judge.

(c) Other Extraordinary Writs. An application for an extraordinary writ other than one provided for in Rule 21(a) must be made by filing a petition with the circuit clerk and serving it on the respondents. Proceedings on the application must conform, so far as is practicable, to the procedures prescribed in Rule 21(a) and (b).

(d) Form of Papers; Number of Copies; Length Limits. All papers must conform to Rule 32(c)(2). An original and 3 copies must be filed unless the court requires the filing of a different number by local rule or by order in a particular case. Except by the court's permission, and excluding the accompanying documents required by Rule 21(a)(2)(C):

(1) a paper produced using a computer must not exceed 7,800 words; and

(2) a handwritten or typewritten paper must not exceed 30 pages.

Local Rule 21(a). Case Captions for Extraordinary Writs.

A petition for a writ of mandamus or writ of prohibition shall not bear the name of the district judge, but shall be entitled simply "In re _______________, Petitioner." To the extent that relief is requested of a particular judge, unless otherwise ordered, the judge shall be represented pro forma by counsel for the party opposing the relief, who shall appear in the name of the party and not that of the judge.

Local Rule 21(b). Petitions for Mandamus or Prohibition.

Strict compliance with the requirements of FRAP 21 is required of all petitioners, even pro se litigants. Petitioner must pay the prescribed docket

fee of $500, payable to the Clerk, U.S. Court of Appeals; submit the forms required by Local Rule 21(c)(1) for cases subject to that Local Rule; or submit a properly executed application for leave to proceed in forma pauperis. The parties are required to submit Disclosure of Corporate Affiliations statements with the petition and answer. See FRAP 26.1 and Local Rule 26.1.

After docketing, the clerk shall submit the application to a three-judge panel. A motion for emergency relief pending determination of the petition may be filed and will be assigned in accordance with Local Rule 27(e).

If the Court believes the writ should not be granted, it will deny the petition without requesting an answer. Otherwise the Court will direct the clerk to obtain an answer. After an answer has been filed, the Court ordinarily will decide the merits of the petition on the materials submitted without oral argument. Occasionally, however, briefs may be requested and the matter set for oral argument.

Local Rule 21(c). Fees and Costs for Prisoner Petitions for Mandamus, Prohibition, or other Extraordinary Relief.

(1) ***Proceedings Arising out of Civil Matters****. A prisoner filing a petition for writ of mandamus, prohibition, or other extraordinary relief in a matter arising out of a civil case must pay the full $500 docket fee. A prisoner who is unable to prepay this fee may apply to pay the fee in installments by filing with the Court of Appeals (1) an application to proceed without prepayment of fees; (2) a certified copy of the prisoner's trust fund account statement for the six-month period immediately preceding the filing of the notice of appeal, obtained from the appropriate official of each prison at which the prisoner is or was confined; and (3) a form consenting to the collection of fees from the prisoner's trust account*

The Court of Appeals will assess an initial partial filing fee of 20% of the greater of:

(a) the average monthly deposits to the prisoner's account for the six-month period immediately preceding the filing of the petition; or

(b) the average monthly balance in the prisoner's account for the six-month period immediately preceding the filing of the petition.

The Court will direct the agency having custody of the prisoner to collect this initial partial fee from the prisoner's trust account, and to collect the remainder of the $500 fee, as well as any other fees, costs, or sanctions imposed by the Court, in monthly installments of 20% of the preceding month's deposits credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account

to the Clerk, U.S. Court of Appeals, each time the amount in the account exceeds $10 until all fees, costs, and sanctions are paid for the petition.

If a prisoner proceeding under this rule fails to file the forms or make the payments required by the Court, the appeal will be dismissed pursuant to Local Rule 45.

(2) ***Effect of Prior Actions and Appeals on Proceedings Arising out of Civil Matters.*** *A prisoner who has, on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it was frivolous, malicious, or failed to state a claim upon which relief could be granted, may not proceed in a matter arising out of a civil case without prepayment of fees unless the prisoner is under imminent danger of serious physical injury.*

(3) ***Proceedings Arising out of Criminal Matters.*** *A prisoner who is unable to prepay the full $500 docket fee for a petition for writ of mandamus, prohibition, or other extraordinary relief arising out of a criminal case may apply to proceed without the prepayment of fees by filing an application for leave to proceed in forma pauperis.*

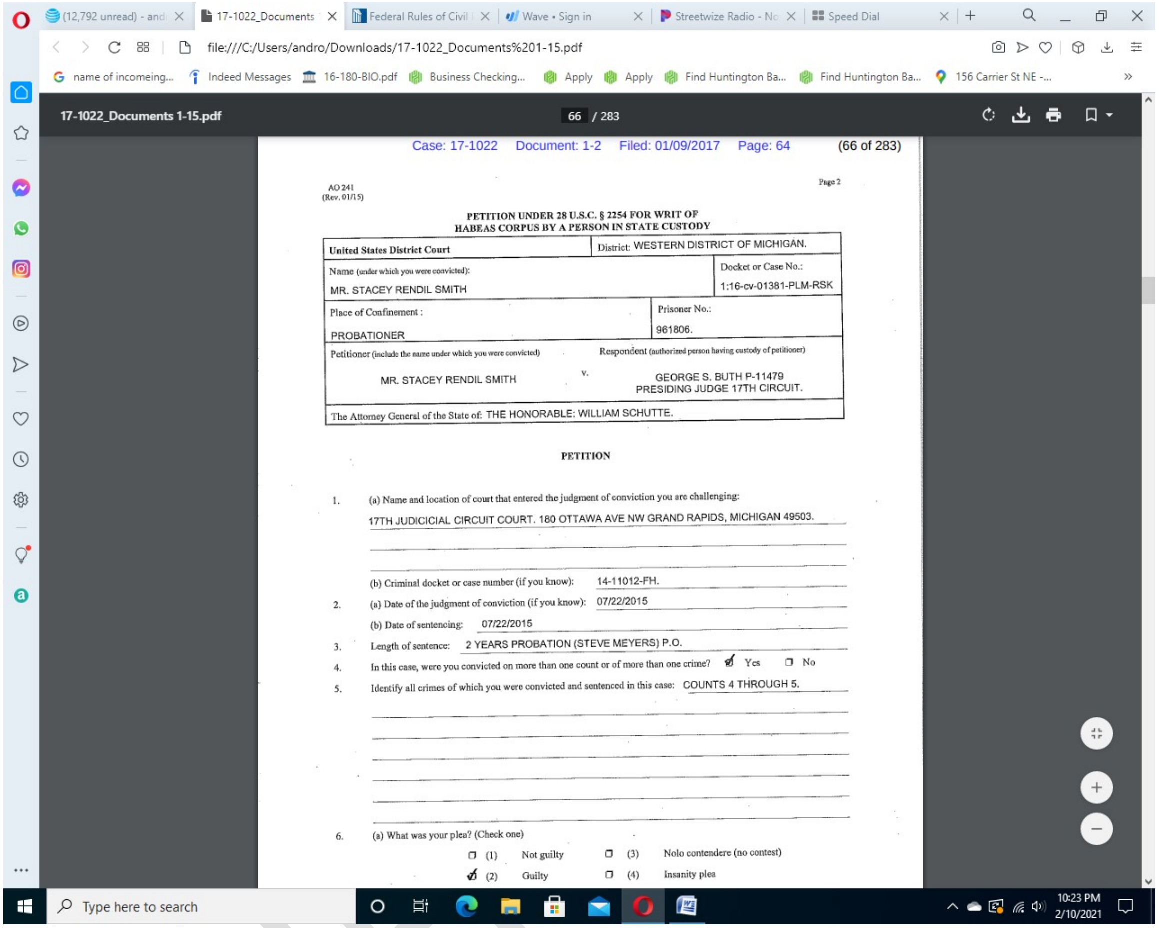
Local Rule 21(d). Petitions for Writ of Mandamus Pursuant to 18 U.S.C. § 3771, Crime Victims' Rights.

A petition for writ of mandamus asserting the rights of a crime victim pursuant to 18 U.S.C. § 3771(d)(3) shall bear the caption "PETITION FOR WRIT OF MANDAMUS PURSUANT TO 18 U.S.C. § 3771, CRIME VICTIMS' RIGHTS." Before filing such a petition, the petitioner must notify the Court of Appeals that such a petition will be filed and must arrange for immediate service of the petition on the relevant parties. Such notification must be by telephone call to the Office of the Clerk during normal office hours (804-916-2700).

A failure to comply with these requirements will adversely affect the Court's ability to decide the petition within 72 hours as required by 18 U.S.C. § 3771(d)(3).

Former Local Rule 21 redesignated Local Rule 21(a) December 1, 1995.
Local Rule 21(b) amended September 25, 1996, February 1, 2001, November 1, 2003, April 27, 2006, December 1, 2009, and December 1, 2013.
Local Rule 21(c) adopted September 25, 1996; amended November 1, 2003, April 27, 2006, and December 1, 2013.
Local Rule 21(d) adopted August 1, 2006.

Former I.O.P.-21.1 redesignated Local Rule 21(b) December 1, 1995.



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PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court	District: WESTERN DISTRICT OF MICHIGAN.
Name (under which you were convicted): MR. STACEY RENDIL SMITH	Docket or Case No.: 1:16-cv-01381-PLM-RSK
Place of Confinement : PROBATIONER	Prisoner No.: 961806.
Petitioner (include the name under which you were convicted) MR. STACEY RENDIL SMITH v.	Respondent (authorized person having custody of petitioner) GEORGE S. BUTH P-11479 PRESIDING JUDGE 17TH CIRCUIT.
The Attorney General of the State of: THE HONORABLE: WILLIAM SCHUTTE.	

PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging: 17TH JUDICICIAL CIRCUIT COURT. 180 OTTAWA AVE NW GRAND RAPIDS, MICHIGAN 49503.

(b) Criminal docket or case number (if you know): 14-11012-FH.

2. (a) Date of the judgment of conviction (if you know): 07/22/2015

(b) Date of sentencing: 07/22/2015

3. Length of sentence: 2 YEARS PROBATION (STEVE MEYERS) P.O.

4. In this case, were you convicted on more than one count or of more than one crime? ☑ Yes ☐ No

5. Identify all crimes of which you were convicted and sentenced in this case: COUNTS 4 THROUGH 5.

6. (a) What was your plea? (Check one)

☐ (1) Not guilty ☐ (3) Nolo contendere (no contest)

☑ (2) Guilty ☐ (4) Insanity plea

<u>The United State Circuit Court of appeals Just recently handed down the second order in case no.: USCOA: 20-1716 and as you can see here it is -----^ (ABOVE IMAGE).</u>

<u>This conveys to me that even the U.S. District Court is questionable yet along with the rest of the courts, refuse to provide relief; instead, the courts prefer this courtroom "double Dutch" and dance around it a second time.</u>

The PLAINTIFF, IN RE, is asking for each party to pay the default (SUM CERTAIN) separately:

3.8 Million USD Plus taxes is the asking relief for – (BREACH OF THE 17TH CIRCUIT SENTENCEING PLEA AGREEMENT) – to which all involved parties are responsible for in relief; punitive and compensatory. If it so pleases this honorable court.

<u>Respectfully Submitted: /s/ MR. STACEY R. SMITH ELECTRONIC SIGNATURE.</u>

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Proposed Order upon Summary Judgment.

Certificate of Service.

PROOF OF SERVICE.

REQUEST FOR EXECUTION OF RULES 24 AND 37 AND 56 FOR SUMMARY JUDGMENT.

CERTIFICATE OF SERVICE TO:

MICHIGAN SUPREME COURT
ATTENTION: CHIEF JUSTICE
925 W. OTTAWA ST
LANSING, MICHIGAN
517-373-0123.

KENT COUNTY PROSECUTOR'S OFFICE.
ATTENTION: LEAD PROSECUTOR.
82 IONIA AVE NW SUITE: 450.
GRAND RAPIDS, MICHIGAN 49503
616-632-4710.

KENT COUNTY CORP. COUNSEL
HON.: GEORGE S. BUTH
300 MONROE AVE NW
GRAND RAPIDS, MI 49503

KENT COUNTY COURTHOUSE.
HON.: MARK A TRUSOCK
180 OTTAWA AVE NW
GRAND RAPIDS, MI 49503

DEF.COUNSEL JOHN R BEASON
ATTENTION: JOHN R BEASON
15 IONIA AVE NW SUITE: 530
GRAND RAPIDS, MI 49503

30TH JUDICIAL CIRCUIT COURT (INGHAM)
ATTENTION: COURT CLERK.
313 KALAMAZOO ST #1
LANSING, MI 48933

TITLE: A REQUEST FOR A FEDERAL ORDER OF MANDAMUS. 1:21-CV-78.

ECOS: >. CERTIFICATE OF SERVICE.

I certify under the penalty of perjury of the United States of America and State of Michigan, that I mailed a true copy of this document to the addresses above on this_____15TH_______ day of ____APRIL_______ 2021 A.D. ANNO DOMINI.

by US first class mail.

ELECTRONIC SIGNATURE MR. STACEY R SMITH

JUDGMENT.

Certificate of Service.

PROOF OF SERVICE.

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ECOS: >. CERTIFICATE OF SERVICE.

I certify under the penalty of perjury of the United States of America and State of Michigan, that I mailed a true copy of this document to the addresses above on this_____16TH_______ day of ____JUNE_______ 2021 A.D. ANNO DOMINI.

by US first class mail.

ELECTRONIC SIGNATURE MR. STACEY R SMITH

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